UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Earl Clyburn and Jean Clyburn,	)	**Civil Action No.:__________**
	)	
Plaintiffs,	)	
	)	
v.	)	**JURY TRIAL DEMANDED**
	)	
Equifax Information Services, LLC,	)	
	)	
Defendant.	)	

COMPLAINT

1. This is an action brought by the Plaintiffs, Earl Clyburn and Jean Clyburn, for actual, statutory and punitive damages, attorney's fees, and costs for Defendant's violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq,* (hereinafter "FCRA").

JURISDICTION AND VENUE

2. This Court has Jurisdiction under 15 U.S.C. §1681p.

3. Venue is proper in the Florence Division because the Plaintiffs reside in Horry County and the Defendant transacted business in this division.

PARTIES

4. The Plaintiff, Earl Clyburn, is a resident and citizen of the State of South Carolina, Horry County, and is over the age of twenty-one (21) years. Plaintiff Earl Clyburn is a consumer as that term is defined by the FCRA, 15 U.S.C. §1681a(c).

5. The Plaintiff, Jean Clyburn, is a resident and citizen of the State of South Carolina, Horry County, and is over the age of twenty-one (21) years. Plaintiff Jean Clyburn is a consumer as that term is defined by the FCRA, 15 U.S.C. §1681a(c).

6. Defendant Equifax Information Services, LLC ("Equifax") is a Georgia corporation registered to do business in South Carolina with the South Carolina Secretary of State. Defendant may be served with process through its registered agent for service of process, Corporation Service Company, 1703 Laurel St., Columbia, SC 29201. At all times and in all respects relevant herein, Defendant was doing business in the state of South Carolina and in this division.

FACTUAL ALLEGATIONS

7. In 2005, Plaintiffs filed for Chapter 13 bankruptcy, but did not include their Wells Fargo (formally Wachovia Bank) home equity loan or their mortgage in the bankruptcy as they were current on both loans. On March 18, 2010, the United States Bankruptcy Court for the District of New Jersey entered an Order granting the Plaintiffs' discharge after completion of their Chapter 13 plan.

8. From 2005, through the present date, Plaintiffs have continually made all of their monthly payments on the home equity loan. Plaintiffs have never missed a payment on the home equity loan and it has never been delinquent or charged off.

9. In 2013, Wells Fargo was not reporting any delinquency on the home equity loan and, in fact, was not even reporting a balance or a display of the previous 81 month payment data.

10. In April 2016, in preparation for moving to South Carolina, Plaintiff Earl Clyburn obtained copies of his credit reports. On the Equifax credit report, the home equity loan was reporting a $0 balance, a date of last of activity of February, 2012, and a date of last payment of July, 2013.

11. In October, 2016, the Plaintiffs moved to South Carolina. Following the move, the home equity loan began being reported on Plaintiffs' Equifax credit reports as charged off.

12. On or about October 24, 2016, Plaintiffs received information that their credit scores had decreased significantly due to a change in the reporting of the home equity loan. Plaintiffs immediately contacted Equifax to dispute this change to their credit reports. No changes were made by Equifax in response to the Plaintiffs' disputes.

13. On or about November 3, 2016, Wells Fargo sent the Plaintiffs a letter stating that "[y]our dispute regarding the accuracy of certain information reported by Wells Fargo to the credit reporting agency has been investigated and a determination has been made. The result of the investigation establishes that the information we reported is accurate." The letter also stated that "due to the remaining unpaid balance the status will continue to report as charge-off."

14. Thereafter, on or about November 14, 2016, the Plaintiffs contacted Wells Fargo by phone and spoke with Janice. During that call the Plaintiffs confirmed that they were not late on any payments on the home equity loan.

15. On or about March 20, 2017, Plaintiff Earl Clyburn received a copy of his Equifax credit report which was reporting the home equity loan as charged off as of January, 2012, a charged off balance of $60,770, and an account history showing charged off from January, 2012 to the present, excluding the reporting of any data between July 2013 and October, 2016.

16. On or about March 20, 2017, Plaintiff Jean Clyburn received a copy of her Equifax credit report which was reporting the home equity loan as a charged off account with a past due balance of $50,663. The account history was showing charged off from January 2012 through June 2013, and November 2016 through January 2017. The historical account information did not show any of the payments made by the Plaintiffs on this account, just a date of last payment of November 1, 2016, with no payment amount shown.

17. On or about April 3, 2017, Plaintiff Earl Clyburn sent a dispute to Equifax concerning the reporting of the home equity loan as charged off. In his dispute, Plaintiff stated that the account was not only never charged off, but had never even been late. Plaintiff Earl Clyburn requested that the negative reporting of the home equity loan be removed from his Equifax credit report. Plaintiff's April 3, 2017, dispute was

received by Equifax on April 5, 2017. Plaintiff Earl Clyburn never received a response from Equifax to this dispute.

18. On or about April 3, 2017, Plaintiff Jean Clyburn sent a dispute to Equifax concerning the reporting of the home equity loan as charged off. In her dispute, Plaintiff stated that the account was not only never charged off, but had never even been late. Plaintiff Jean Clyburn requested that the negative reporting of the home equity loan be removed from her Equifax credit report. Plaintiff's April 3, 2017, dispute was received by Equifax on April 5, 2017.

19. On or about April 25, 2017, Plaintiff Jean Clyburn received the results of Equifax's alleged investigation into her April 3, 2017 dispute. In the results, Equifax notified Plaintiff that Wells Fargo had verified to Equifax that the current status and prior payment history on the home equity loan were being reported correctly. Equifax failed to do any independent investigation of Plaintiff Jean Clyburn's dispute. Instead, Equifax simply parroted incorrect information. Additionally, Equifax added the comment, "Chapter 13 Bankruptcy Dismissed." As a result, the home equity loan continued to be reported by Equifax as charged off, and verified by Wells Fargo.

20. On or about May 22, 2017, Plaintiff Jean Clyburn sent a second dispute to Equifax. In this dispute, Plaintiff Jean Clyburn once again stated that the home equity loan being reported as charged off had not only never been charged off, but had never been late. Plaintiff's dispute was received by Equifax on May 25, 2017.

21. On or about May 22, 2017, Plaintiffs sent a Qualified Written Request to Wells Fargo and requested a complete payment history on the home equity loan, a breakdown of all amounts claimed to be in arrears or delinquent, and the current balance of any amount held in suspense by Wells Fargo.

22. On or about May 24, 2017, Plaintiff Earl Clyburn sent a second letter to Equifax alerting Equifax that he had still not received a response to his April 3, 2017, dispute. Thereafter, Plaintiff Earl Clyburn received a copy of his Equifax credit report showing that the home equity loan was continuing to be inaccurately reported as charged off on his Equifax credit report.

23. On or about May 30, 2017, Plaintiff Earl Clyburn received an adverse action notice from Bank of America indicating that his application for credit through Conway Chrysler Dodge Jeep had been denied due to his Equifax credit report.

24. On or about May 31, 2017, Plaintiffs received Wells Fargo's response to their May 22, 2017 Qualified Written Request. Wells Fargo provided Plaintiffs with a payment history that covered January, 27, 2012 to May, 2017. The payment history provided by Wells Fargo clearly evidenced that Plaintiffs had made timely monthly payments throughout the entire period provided by Wells Fargo and that Plaintiffs had not been charged any late fees.

25. On or about June 11, 2017, Plaintiff Jean Clyburn received the results of Equifax's alleged investigation into Plaintiff's second dispute. In response to this dispute,

Equifax updated the historical account information and prior payment history, and removed the "Chapter 13 Bankruptcy Dismissed" comment. However, the home equity loan continued to be reported as charged off since January, 2012. Additionally, Defendant reported a date of first delinquency as October 2011, the account as 30 days late as of December, 2011, and a charged-off balance of $60,770. All of that information is incorrect and inaccurate.

26. On or about June 11, 2017, Plaintiff Earl Clyburn received the results of Equifax's alleged investigation of his dispute to Equifax. Therein, Equifax informed Plaintiff Earl Clyburn that it had updated its reporting of the account, that the historical account information had been updated, and that the prior payment history on the account had been updated. However, upon review of his credit report, the only information updated was the date of last payment and the addition of May, 2017, to the account history section showing the account as charged off.

27. On or about July 12, 2017, Plaintiff Earl Clyburn sent a third dispute to Equifax in which he once again disputed the reporting of the Well's Fargo home equity loan. With this dispute, Plaintiff Earl Clyburn included the payment history from Wells Fargo which showed that the account had been paid every month since 2012, which was the earliest date provided on Wells Fargo's payment history.

28. On or about July 12, 2017, Plaintiff Jean Clyburn sent a third dispute to Equifax in which she once again disputed Wells Fargo's reporting of the home equity loan. With

her dispute, Plaintiff Jean Clyburn also included a copy of the payment history received from Wells Fargo which showed that the account had been paid every month since 2012.

29. On or about July 26, 2017, Plaintiff Earl Clyburn received the results of Equifax's alleged investigation into his dispute. Equifax updated the date of last payment and balance of the account, but did not correct Plaintiff's account to show as a current account, paid as agreed, and never late. Equifax continued to report the home equity loan to Plaintiff's creditors and potential creditors as a charged off account with a past due balance.

30. On or about July 26, 2017, Plaintiff Jean Clyburn received the results of Equifax's alleged investigation into her dispute. Equifax updated the date of last payment and balance of the account, but did not correct Plaintiff's account to show as a current account, paid as agreed, and never late. Equifax continued to report the home equity loan to Plaintiff's creditors and potential creditors as a charged off account with a past due balance.

31. Throughout this ordeal, the only negative account appearing on Plaintiff Jean Clyburn's Equifax credit reports was the Wells Fargo home equity loan. Additionally, the only negative information appearing on Plaintiff Earl Clyburn's Equifax credit reports was the Wells Fargo home equity loan and a paid-in-full medical bill that had previously been sent to collections.

32. Due to the inaccurate information being reported on Plaintiffs' Equifax credit reports, Plaintiffs were only able to secure an automobile loan from Chase at 7.8% interest, a rate much higher than Plaintiffs would have otherwise received had the inaccurate information not been present on their credit reports. Additionally, because of the inaccurate information reported by Wells Fargo, Plaintiffs have been unable to consolidate debt which arose from their move to South Carolina as was originally planned by Plaintiffs prior to Equifax's reporting of the above-mentioned inaccurate information.

COUNT ONE
(Fair Credit Reporting Act)

33. The Plaintiffs adopt the averments and allegations of paragraphs 7 through 32 hereinbefore as if fully set forth herein.

34. Defendant maintains and distributes credit data files on the Plaintiffs' credit. Defendant willfully failed to comply with the requirements imposed under the FCRA, 15 U.S.C. §1681 et seq., including but not limited to: (a) failing to follow reasonable procedures to assure maximum possible accuracy of the information in consumer reports, as required by 15 U.S.C. §1681e(b); (b) failing to comply with the reinvestigation requirements in 15 U.S.C. §1681i; and (c) failing to conduct a reinvestigation of Plaintiff's disputes within thirty days of receipt of Plaintiffs' disputes.

35. The Plaintiffs further allege that Defendant repeatedly failed to delete and suppress erroneous, false, misleading, and/or inaccurate information from the Plaintiffs' credit files.

36. Due to Defendant's willful failure to comply with the requirements of the Fair Credit Reporting Act, the Plaintiffs are entitled to statutory damages.

37. As a result of Defendant's violations of the FCRA, the Plaintiffs suffered, continue to suffer, and will suffer future damages, including denial of credit, lost opportunity to receive credit, damage to their reputations, marital discord, worry, anxiety, physical sickness, physical pain, stress, headaches, loss of sleep, distress, frustration, embarrassment, and humiliation. Plaintiffs are entitled to actual damages in an amount to be determined by the jury.

38. In addition, the Plaintiffs have incurred out of pocket expenses, litigation expenses, and attorneys' fees which, but for the acts and omissions of Defendant alleged herein, would not have been necessary.

39. Further, Defendant's acts and omissions were willful and demonstrate a reckless disregard for the Plaintiffs' rights. Therefore, Defendant is liable to the Plaintiffs for punitive damages in an amount to be determined by the jury.

40. Plaintiffs are entitled to their attorney fees, pursuant to 15 U.S.C. §1681n(a).

COUNT TWO
(Fair Credit Reporting Act)

41. The Plaintiffs adopt the averments and allegations of paragraphs 7 through 40 hereinbefore as if fully set forth herein.

42. Defendant negligently failed to comply with the requirements imposed under the FCRA, 15 U.S.C. §1681 et seq., including but not limited to: (a) failing to follow reasonable procedures to assure maximum possible accuracy of the information in consumer reports, as required by 15 U.S.C. §1681e(b); (b) failing to comply with the reinvestigation requirements in 15 U.S.C. §1681i; and (c) failing to conduct a reinvestigation of Plaintiff's dispute within thirty days of receipt of said dispute.

43. Defendant repeatedly failed to delete and suppress erroneous, false, misleading, and/or inaccurate information from the Plaintiffs' credit files.

44. As a result of Defendant's violations of the FCRA, the Plaintiffs have suffered, continue to suffer, and will suffer future damages, including denial of credit, lost opportunity to receive credit, damage to their reputations, marital discord, worry, anxiety, physical sickness, physical pain, stress, headaches, loss of sleep, distress, frustration, embarrassment, and humiliation. Plaintiffs are entitled to actual damages in an amount to be determined by the jury.

45. In addition, the Plaintiffs have incurred out of pocket expenses, litigation expenses, and attorneys' fees which, but for the acts and omissions of Defendant alleged herein, would not have been necessary.

46. Plaintiffs are entitled to their attorney fees, pursuant to 15 U.S.C. §1681o(a)(2).

AMOUNT OF DAMAGES DEMANDED

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand a judgment against the Defendant for the following:

A. Actual and statutory damages from Defendant pursuant to 15 U.S.C. §1681n(a)(1)(A) and/or 15 U.S.C. §1681o(a)(1);

B. Punitive damages from Defendant pursuant to 15 U.S.C. §1681n(a)(2);

C. Costs and reasonable attorney's fees from Defendant pursuant to 15 U.S.C. §1681n(a)(3) and/or 15 U.S.C. §1681o(a)(2); and

D. For such other and further relief as the Court may deem just and proper.

/s/ Penny Hays Cauley
Penny Hays Cauley, Fed. ID No. 10323

/s/ William K. Geddings
William K. Geddings, Fed. ID No. 12584
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PLAINTIFFS DEMAND A TRIAL BY STRUCK JURY ON ALL COUNTS

/s/ Penny Hays Cauley
Penny Hays Cauley

DEFENDANT TO BE SERVED VIA CERTIFIED MAIL:
Equifax Information Services, Inc.
c/o C T Corporation System – Registered Agent
1703 Laurel Street
Columbia, SC 29201